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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Cable Television Consumer Protection and Competition Act of 1992	)	CS Docket No. 97-248
	)	
Petition for Rulemaking of Ameritech New Media, Inc. Regarding Development of Competition and Diversity in Video Programming Distribution and Carriage	)	RM No. 9097

REPLY COMMENTS OF
<u>NATIONAL CABLE TELEVISION ASSOCIATION</u>

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The National Cable Television Association ("NCTA") hereby submits its reply comments in the above-captioned proceeding.

INTRODUCTION AND SUMMARY

One would hardly guess, after reading the initial comments of cable's DBS, MMDS and telephone company competitors, that virtually all of those competitors currently have access to virtually all of the most frequently watched and most widely distributed cable program networks. Nor would one guess that during the five years that the Commission's program access rules have been in effect, there have been only 34 complaints filed -- and only three cases in which the Commission has found *any* rule violation. Those comments, like Ameritech's initial petition for rulemaking, all take for granted the premise that is really at issue in this proceeding -- namely, that the program access rules are not working and need to be fixed. But the one thing that is clear from the record is that there is no evidence of a program access "problem" that needs to be "solved."

Thus, various parties contend that time limits on the resolution of complaints are necessary because "[e]ach day a meritorious complaint goes unresolved, for whatever reason, is another day in which an aspiring competitor is denied meaningful access to programming."[1] But if meritorious complaints are a rarity, if aspiring competitors already have meaningful access to most if not all popular cable programming services, and if there is no substantial backlog of pending complaints, then little would be gained by forcing the Commission to resolve complaints with less care and greater haste.

Similarly, competing MVPDs argue that authorizing damages as a remedy for program access violations would provide a stronger deterrent to such violations. But if the Commission has only found three violations of the rules, and has never found a violation that warranted the imposition of a forfeiture, what is left to deter? Competing MVPDs also maintain that an automatic right of discovery is necessary in order to provide them with the information necessary to prosecute their complaints. But the existing rules authorize the Commission to compel production of all documents and information that it deems relevant and necessary in resolving complaints, and there is no evidence that the Commission has refused to compel such evidence or otherwise abused its discretion with respect to discovery.

Finally, a number of competing MVPDs urge the Commission to find a way to stretch its Section 628 jurisdiction in order to reach "the cable industry's gradual migration of programming to terrestrial delivery."[2] They point to only a single instance of such migration of

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1 Comments of Ameritech New Media, Inc. at 8.

2 Comments of Wireless Cable Association International, Inc. at 24.

programming to a new, terrestrially-delivered network -- which the Commission is already reviewing pursuant to a pending complaint. There is no evidence of any trend by satellite-delivered *networks* to switch to terrestrial delivery. And there certainly is no evidence that the ability of alternative MVPDs to compete in the provision of video programming is being significantly hindered by any such supposedly anticompetitive switches.

Thus, with respect to all these issues, parties seeking Commission action generally propose "solutions" to problems that do not exist. But, as many other commenting parties point out, *the proposed solutions would themselves cause significant problems.* Time limits would increase the likelihood of hasty and erroneous decisions. Damages would encourage frivolous complaints, discourage efficient and satisfactory negotiated settlements, and add a thick layer of complexity to the resolution of complaints. And discovery as of right would simply encourage fishing expeditions while requiring protracted procedures to prevent abuses and breaches of confidentiality.

The purpose of the program access rules is not to force every single cable network, in every conceivable circumstance, to deal with all competing MVPDs on exactly equivalent terms. The purpose of the rules is to ensure that competition to cable is not being significantly hindered by a lack of access to satellite-deliveredprogramming on fair terms. That objective has been achieved. Whatever competitive hurdles competing MVPDs may face today, access to programming is not one of them.[3] The program access rules, in their current form, regulate and interfere with the relationships between program services and their distributors to an

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[3] *See* Attachment A, which shows that the top 20 cable networks are *all* available to cable's competitors.

unprecedented extent. There is no basis for *adding* to the regulatory burdens and marketplace distortions that they impose.

I. TIME LIMITS.

A number of commenting parties suggest that the Commission is taking more time than necessary to resolve program access complaints and therefore urge the Commission to impose deadlines on itself. But unless the Commission has been lax in its review of complaints -- and there is no evidence that this is the case -- any self-imposed deadlines would cause the Commission to spend *less* time than necessary on the hardest and most complex cases. The result would simply be to increase the likelihood of erroneous adjudications.

Wholly apart from whether the Commission's processing time is any longer than necessary, the commenting parties fail to provide any compelling reasons for increasing the risk of error by imposing inflexible time limits. Their suggestion that the time for processing complaints is somehow preventing them from competing effectively in the multichannel video programming marketplace is not credible.[4] There is no reason to believe that the time that the Commission takes to resolve the handful of complaints that are filed each year has any effect at all on the complaining MVPDs' subscribership.

DirecTV complains that the absence of time limits on the resolution of complaints "has resulted in alternative MVPDs compromising at the negotiating, or settlement, table"[5] -- which is exactly where these matters belong. Negotiated settlements between MVPDs and programmers

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4 Thus, several parties that generally support Ameritech's proposals with respect to discovery and damages are notably silent on the issue of time limits. *See, e.g.*, Comments of Consumers Union *et al.*; Comments of Echostar Communications Corporation.

5 Comments of DirecTV, Inc. at 24.

provide access to programming on mutually acceptable terms. Terms imposed by regulatory fiat cannot better reflect a fair marketplace outcome than negotiated terms -- and there certainly is no reason to believe that MVPDs could count on more *favorable* terms from a Commission decision.

Bell Atlantic argues that the Commission should impose on itself the same time limits that it adopted for resolving formal common carrier complaints and thereby "conform the pleading cycles for both formal common carrier and program access complaints."[6] Other than to provide aesthetic symmetry, however, it is not evident why these wholly different rules and processes should be conformed. Common carrier and program access complaints involve different bureaus, different issues, different regulatory schemes.

Moreover, as we pointed out in our initial comments, to establish time limits is to establish priorities. It makes no sense to argue that because the Commission has imposed time limits with respect to certain matters, it should impose the same time limits for all other matters. The Commission cannot give every matter higher priority than before, unless it is able to increase its available resources.

Given the relative impact on marketplace competition, it would hardly be unreasonable for the Commission to give higher priority adjudicating complaints against incumbent local exchange carriers for impediments to competition than to resolving program access complaints. Two years after enactment of the Telecommunications Act of 1996, incumbent local exchange carriers still have close to 100% shares of their relevant markets, and *not* one effort by a Bell Operating Company to gain entry into the long distance market by showing that it has

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[6] Comments of Bell Atlantic at 4. *See also* Comments of Ameritech New Media at 9-10.

sufficiently opened its facilities to local competition has succeeded. On the other hand, six years after enactment of Section 628, cable's share of MVPD subscribership has dropped to 87%, and the subscribership of cable's competitors continues to grow geometrically each year. Meanwhile, competing MVPDs generally have access to cable programming, there have only been three adverse program access rulings, and there is no significant backlog of pending complaints.

Finally, in our initial comments, we argued that even if the Commission were to impose time limits on itself for adjudicating program access complaints, it should not shorten the time period for answering complaints. On this point, even several MVPDs that support deadlines on the resolution of complaints agree. Thus, according to American Programming Service, Inc., *et al.*:

> It has been the Distributors' experience that the answer and reply can be complex (particularly in price discrimination cases) and are of critical importance to both sides in a program access case. Unlike a civil lawsuit where the complaint and answer can be 'bare-bones' and often merely establish the basic elements of claims and defenses to be later proven at trial, in the case of program access/price discrimination actions the pleadings are at the heart of the case and form the basis for the Commission's decision. For this reason, the Distributors do not encourage a shortening of the time for the basic pleadings.[7]

In sum, time limits are unnecessary and counterproductive, and the Commission should reject them.

II. DAMAGES.

According to several commenting parties, the current program access rules and remedies provide programmers with little or no incentive to comply with the requirements. The most

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[7] Joint Comments of American Programming Service, Inc. *et al.* at 7.

direct and obvious evidence to support this proposition would, of course, be evidence of widespread noncompliance with the rules. But there is no such evidence. To the contrary, as noted above, there have only been 34 complaints in five years -- and only three adjudicated violations.

Some commenting parties simply ignore the facts and baldly assert (without any evidence) that there *is* widespread noncompliance.[8] Others ignore the facts and argue that it is hard to see how the current rules *could*, in theory, deter violations. The Wireless Cable Association ("WCA"), for example, argues that programmers have little incentive to comply or settle cases "because the Commission's existing remedies for program access violations are by and large prospective only" and programmers know that "if they lose the Commission at most will simply require them to adjust their future behavior to comply with the program access rules."[9] Wholly apart from the fact that most programmers *do* comply with the rules, and most program access complaints *are* settled, WCA's fundamental premise is wrong: The Commission's existing remedies are *not* solely prospective. The Commission may, in appropriate cases, impose forfeitures.

Other parties acknowledge the availability of forfeitures but argue that the maximum amount of such forfeitures is too low to deter violations or settlements. Thus, Bell Atlantic, quoting Ameritech, flatly asserts that "it is more profitable for cable operators and programming

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8 *See, e.g.,* Comments of DirecTV, Inc. at 24 ("Because anticompetitive behavior by incumbent cable interests continues in today's MVPD marketplace and results in significant competitive harm to aggrieved alternative MVPDs and the public at large, damages are necessary both to compensate for and to deter unlawful or dilatory tactics by violators of the program access rules").

9 Comments of Wireless Cable Association International, Inc. at 17.

vendors to violate the law than to obey it."[10] And GTE asks, "What incumbent operator would not choose to absorb such forfeitures rather than lose its monopoly position?"[11] The problem with these arguments and rhetorical questions is that most if not all vertically integrated satellite cable networks are *not* violating the law but are obeying it. It may be hard for incumbent local exchange carriers such as Ameritech, Bell Atlantic and GTE to imagine why cable programmers would choose to obey a law that required them to deal with their competitors unless there were draconian punishments for noncompliance. The evidence suggests, however, that cable programmers see things differently.

Thus, if the Commission were to replace or supplement forfeitures with damages, there would be little or no effect on the number of violations -- because the number is already minuscule. But there would likely be an increase in the number of *complaints.* Using forfeitures rather than damages to deter violations ensures that the procedures are invoked only by viable MVPDs seeking access to programming -- not by failed competitors seeking only to mitigate losses that have nothing to do with access to programming.[12]

Moreover, while damages would provide no greater deterrent effect, *calculating* damages would add significantly to the complexity and burdensomeness of program access adjudications. Even WCA, which proposes the "bifurcation of the liability and damages issues into separate

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[10] Comments of Bell Atlantic at 6, *quoting* Ameritech Petition for Rulemaking at 21.

[11] Comments of GTE at 7.

[12] At the same time as DBS is rapidly growing, there are a substantial number of distributors of C-band satellite service whose customer base is declining. Permitting the recovery of damages will create perverse incentives for these distributors to blame inevitable declines and failures on a supposed lack of program access.

proceedings," acknowledges the "potentially complex damages calculations" that would be required.[13]

Absent any evidence that programmers are flouting the rules even in the face of prospective forfeitures, there is no reason to replace or supplement forfeitures with damages. So far, the Commission has not even found it necessary to invoke its forfeiture powers in order to ensure general, widespread compliance with the rules.

III. DISCOVERY.

The proponents of discovery as of right in program access proceedings generally contend that, as EchoStar claims, "without a right of discovery, there is no way for the complainant to obtain the information necessary to make its discrimination case."[14] But the issue is not whether parties should be compelled to produce relevant documents and materials that are "required in order for the . . . Commission to understand and determine whether there has been discrimination."[15] It is whether every complaining party should have an automatic right to engage in discovery or whether, as is currently the case, the need for discovery and the scope of such discovery should be determined in each case by the Commission.

The current rules do not allow broad fishing expeditions by MVPDs into the sensitive files and documents of programmers. But they provide for discovery of all material that the Commission deems necessary and relevant to its resolution of a complaint. Contrary to EchoStar's assertion, discovery as of right is *not* "required for the complainant to make its *prima*

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13 Comments of Wireless Cable Association International, Inc. at 18.

14 Comments of EchoStar Communications Corporation at 4.

15 *Id.* at 3.

facie case."[16] As we explained in our initial comments, complaining parties must first request disclosure of necessary and relevant materials from the defendant programmer. But if the programmer refuses to provide such materials, the complainant may make its *prima facie* case based on information and belief, after which the Commission will determine whether and to what extent discovery is necessary.

Thus, if the proponents of more liberal discovery have a quarrel, it is not with the existing rules but with the Commission's *implementation* of those rules. BellSouth essentially concedes this point. It complains that "[n]otwithstanding this conceptual right to discovery, however, in practice the Commission staff has sparingly used its discretion to order discovery."[17] It seems not to have occurred to these parties that the Commission may, in each case, have properly *exercised* its discretion in determining that discovery was *not* necessary to enable it to resolve the complaint. In any event, what they are now asking for is a rule that would permit discovery as of right in precisely those cases in which the Commission's staff, under existing rules, would not view such discovery as necessary or relevant.

Absent any evidence or reason to believe that the Commission is generally abusing its discretion with respect to discovery, there is no basis for replacing Commission-controlled discovery with automatic discovery as of right. As BellSouth concedes, "full-blown discovery will often prove excessive and unnecessary, and could contribute to costly delay in the disposition of a complaint."[18] And, as we stated in our initial comments, it would encourage

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16 *Id.*

17 Comments of BellSouth Corporation, *et al.* at 12. *See also* Comments of RCN Telecom Services, Inc. at 6 ("While the Commission has the discretion to order discovery in program access complaints, it has exercised this authority only twice").

18 Comments of BellSouth Corporation, *et al.* at 12. Even the supposedly "limited" right of discovery proposed by BellSouth would add complicated and burdensome procedural hurdles to

MVPDs to engage in extensive fishing expeditions for the purposes of (1) obtaining sensitive information regarding competitors' affiliation agreements; (2) harassing programmers into providing more favorable terms and conditions; and (3) determining, on a scatter-shot basis, whether any of their affiliation agreements might conceivably be deemed discriminatory.[19]

IV. TERRESTRIAL DELIVERY.

If awards were given for creativity in statutory construction, the winner and runners-up would surely include commenters in this proceeding. The requirements of Section 628 do not apply to *all* cable programming vendors; they apply only to "*satellite* cable programming vendors in which a cable operator has an attributable interest." Some commenting parties argue, however, that Congress did not *mean* to limit the applicability of Section 628 to satellite-delivered services.

Bell Atlantic, for example, argues that "the legislative history of the 1992 Cable Act could fairly be read to suggest that any nationally or regionally distributed programming should be covered by Section 628, *even if it has never been offered by satellite.*"[20] The legislative history upon which Bell Atlantic relies is the Senate Report accompanying the Senate version of the 1992 Cable Act:

> According to the Senate report, the reach of Section 628 was limited "to national and regional cable programmers, that is,

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each program access proceeding, as illustrated by the multi-track timelines and explanation provided by BellSouth. *Id.* at 13-17.

19 *See* Comments of NCTA at 8. WCA proposes that "to prevent 'fishing expeditions,' the Commission should expressly provide for the imposition of sanctions against complainants who abuse the discovery process." Comments of WCA at 13. If the Commission were to permit discovery as of right, it certainly should impose sanctions for abuses -- but it is unlikely that such sanctions would effectively prevent all efforts to engage in overbroad or unnecessary fishing expeditions for inappropriate purposes.

20 Comments of Bell Atlantic at 11 (emphasis added).

> programmers which license for distribution to more than one cable community. . . ." At the time, most national and even regional programming was delivered by satellite. The advances in technology that have made terrestrial delivery systems a viable alternative have simply overtaken the specific statutory language, but not Congressional intent.[21]

The reason why the Senate Report refers to "national and regional cable programmers" instead of "satellite cable programming vendors" is that the program access provisions of the Senate *bill* applied to "national and regional cable programmers." But the Conference Report *rejected* the Senate version and adopted the House provisions, which applied to "satellite cable programming vendors." In other words, Congress was faced with a clear choice, and it chose to apply the program access prohibitions *only* to services delivered by satellite.

EchoStar similarly contends that "the Commission should interpret the statutory definition [of satellite cable programming] broadly."[22] Thus, according to EchoStar, the term "transmitted by satellite," which appears in the statutory definition of "satellite cable programming"

> is not limited in terms of when the transmission occurred or who effected it. If certain programming *was formerly* transmitted by satellite, a subsequent switch to fiber transmission should not matter.[23]

But it *does* matter whether programming is or is not *currently* transmitted by satellite, because "the term 'satellite cable programming' means video programming which *is* transmitted via satellite"[24] -- not programming that *was* transmitted via satellite.

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21 *Id., quoting* S. Rep. No. 102-92 at 28 (1991).

22 Comments of EchoStar Communications Corporation at 13.

23 *Id.*

24 47 U.S.C. § 605(d)(1) (emphasis added). EchoStar contends that a broad statutory construction is "mandated by the purpose of the program access law -- to enhance the competitiveness of MVPDs," Comments of EchoStar at 13, and it notes that "[a]s stated in the House Report

Most other parties appear to acknowledge that Section 628(c)'s specific prohibitions against exclusive contracts and discriminatory prices, terms and conditions apply only to satellite-delivered services. Some contend, however, that Section 628(b), which prohibits vertically integrated satellite cable programming vendors from engaging in "unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any multichannel video programming distributor from providing satellite cable programming . . . to subscribers or consumers," generally prohibits a satellite-delivered service from *switching* to terrestrial delivery.

This contention is based on the assumption that switching from satellite to terrestrial delivery (1) is generally "unfair or deceptive," *and* (2) has the purpose or effect of significantly hindering or preventing MVPDs from providing satellite cable programming. But there is no reason to believe that any switches that might occur would meet *either*, much less both, of these tests. Even DirecTV and BellSouth acknowledge that a switch from satellite to terrestrial should be deemed "unfair" for purposes of Section 628(b) only if it is intended to deny programming to MVPD competitors "*without any legitimate business justification.*"[25] As many parties point out,

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accompanying H.R. 4850 (the House bill including the program access provisions), '[t]he access to programming language is the only truly competitive portion of the cable bill.'" *Id., quoting* H.R. Rep. No. 102-628 at 165-66 (1992). Actually, the House Report says no such thing -- because the House bill that was adopted by the Energy and Commerce Committee did not include any program access provisions. The language quoted by EchoStar comes from a minority statement complaining about the *rejection* of program access provisions by the Committee. Ultimately, the full House did, of course, adopt the provision that became Section 628 -- but the fact that this provision was rejected by the Committee and was among the last to be added to the bill belies EchoStar's suggestion that it was viewed by Congress as the most important, much less the "only" procompetitive provision in the Act.

[25] Comments of DirecTV, Inc. at 14; Comments of BellSouth Corporation, *et al.* at 23 (emphasis added).

terrestrial delivery has become an efficient alternative to satellite delivery in certain circumstances, making it likely that such a switch has a legitimate business justification.

Ameritech, for example, acknowledges that "it is feasible *and perhaps economically desirable*, to deliver some types of cable programming via other technologies, including fiber optic cable."[26] As Consumers Union points out,

> [f]iber delivery of programming also makes greater economic sense when clustered MSOs provide 'local' and/or 'regional' programming that is seen only in a discreet [*sic*] region of the country. . . . Moreover, to the extent that cable operators will seek to engage in other services (Internet, telephony) that use fiber optic and other terrestrial technology, they will increasingly rely on those technologies for all of their services, including video programming delivery.[27]

Comcast Corporation, which has recently launched a new terrestrially-delivered regional sports network, confirms that "it can be significantly less expensive to deliver a local or regional programming service terrestrially, rather than via satellite."[28]

Moreover, wholly apart from whether switching a service to terrestrial delivery is "unfair," it is highly unlikely that removing a service from the ambit of the program access rules will significantly hinder or prevent any MVPDs from providing video programming to subscribers or consumers. RCN Telecom Services, Inc. argues that "[m]oving satellite programming to terrestrial delivery [has] the effect of hindering or preventing MVPDs from

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[26] Comments of Ameritech New Media at 24 (emphasis added).

[27] Comments of Consumers Union, *et al.* at 9.

[28] Comments of Comcast Corporation at 15. Comcast points out that it costs approximately $600,000 per year to deliver its service terrestrially, and that delivering the service by satellite would cost $2.28 million per year (using a full band transponder), $1.4 million (using a second tier transponder), or between $720,000 and $900,000 (using a digitally compressed signal and sharing digital capacity), plus uplinking costs. *Id.* n.10.

providing *that* programming to subscribers."[29] Consumers Union similarly contends that a switch of a service from satellite to terrestrial delivery and the subsequent refusal to provide that service to a particular MVPD violates Section 628(b) because it prevents the MVPD "from providing its viewers the *very same* "satellite cable programming" that they had received in the past."[30]

But these arguments misconstrue the "harm" test of Section 628(b). The test is not whether the denial of a particular programming service to an MVPD significantly hinders or prevents the MVPD from providing *that* programming service. It is whether the unavailability of a service has a significant adverse effect on the MVPD's ability to *compete* in the provision of video programming to subscribers or consumers. As the Commission has made clear, its "analysis of the hindrance in the context of an alleged unfair practice will focus on whether the purpose or effect of the practice was to hinder or harm the complainant *relative to its competitors*."[31] Since MVPDs currently have access to virtually all vertically integrated, satellite-delivered services (as well as all of the most frequently watched and widely distributed *non*-vertically integrated satellite-delivered services), and in many cases offer more programming as a result of greater channel capacity, it is extremely unlikely that the loss of any particular service that may switch from satellite to terrestrial delivery would inflict significant competitive harm on an MVPD.

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[29] Comments of RCN Telecom Services, Inc. at 15 (emphasis added).

[30] Comments of Consumers Union, *et al.* at 5 (emphasis added) (footnote omitted).

[31] *First Report and Order*, 8 FCC Rcd 3359, 3374 (1993) (emphasis added).

Finally, some parties suggest that even if Section 628 does not generally extend to vertically integrated services that switch from satellite to terrestrial delivery, the Commission has independent authority under Section 4(i) of the Communications Act to apply its program access rules to such services.[32] Section 4(i) specifically authorizes the Commission to "perform any and all acts, make such rules and regulations, and issue such orders, *not inconsistent with this Act*, as may be necessary in the execution of its functions."[33] There may, indeed, be cases in which Congress has compelled the Commission to regulate in particular areas without ever addressing or considering whether or not it might be in the public interest for the Commission, in its discretion, to extend the same regulation to other areas. And in those cases, where Congress has not "directly spoken to the precise question at issue," and extending the regulation is deemed necessary to the implementation of a specific statutory mandate, the Commission may have ancillary authority to do so under Section 4(i).[34]

But *this is not such a case*. Consumers Union argues that the fact "[t]hat Congress was silent on the matter of terrestrial delivery of programming in the plain language *and legislative history* of the 1992 Cable Act does not strip the Commission of jurisdiction to regulate it as 'necessary' to implement it."[35] But Congress *did* address this issue in the legislative history. As discussed above, the Senate version of the program access restrictions applied to all national and regional services, including those delivered terrestrially -- and the Conference Committee

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32 *See, e.g.*, Comments of RCN Telecom Services, Inc. at 16; Comments of Consumers Union, *et al.* at 5.

33 47 U.S.C. § 154(i) (emphasis added).

34 *See Mobile Communications Corp. of America v. FCC*, 77 F.3d 1399, 1404-05 (D.C. Cir. 1996), *quoting Chevron U.S.A. v. NRDC*, 467 U.S. 837, 842 (1984).

35 Comments of Consumers Union, *et al.* at 7 (emphasis added).

specifically rejected that version in favor of the House restrictions, which applied only to satellite-delivered services.

In sum, Congress specifically determined that the program access rules should *not* apply to terrestrially delivered services. Nothing in Section 628, Section 4(i), or any other provision of the Communications Act gives the Commission discretion to override this determination.

CONCLUSION

The record in this proceeding demonstrates that the proposals of Ameritech and DirecTV to amend the program access rules are unnecessary and would be counterproductive[36] There is no evidence of any problem that need to be solved. Yet the proposed "solutions" will themselves

[36] In addition to seeking comments on the Ameritech and DirecTV proposals discussed above, the Commission has also sought comment on proposals of the Small Cable Business Association ("SCBA") to amend or clarify certain aspects of the rules regarding buying groups. As SCBA itself notes, the National Cable Television Cooperative and its members currently have contracts with all vertically-integrated programmers -- the only programmers subject to the rules. *See* Comments of SCBA at 6 (emphasis omitted). Moreover, "[n]one of those current contracts require joint and several liability of the members." *Id.* This raises a question, in the first instance, as to whether changing or clarifying the rules regarding buying groups is necessary. In any event, if the Commission were to determine that a change or clarification was appropriate, it must, as HBO suggests, ensure that any such change or clarification adequately preserves a programmer's right to demand assurances with respect to creditworthiness and financial stability as part of any agreement with a buying group. *See* Comments of Home Box Office at 8.

create significant problems. For these reasons and for the reasons set forth in our initial comments, the proposed rule changes should be rejected.

Respectfully submitted,

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